Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Message Text

CONFIDENTIAL

PAGE 01 PANAMA 04229 111835Z
ACTION L-03

INFO OCT-01 ARA-10 ISO-00 PRS-01 PM-04 INR-07 SY-05
SCA-01 SSO-00 INRE-00 /032 W
----------111852Z 039161 /42
O 111803Z JUN 77
FM AMEMBASSY PANAMA
TO SECSTATE WASHDC IMMEDIATE 2326

C O N F I D E N T I A L PANAMA 4229

STADIS//////////////////////////

E.O. 11652: GDS
TAGS: PDIP, MILI PN, PQ
SUBJECT: GOP REQUEST TO EXTRADITE U.S. SOLDIER

REF: A. PANAMA 4173; B. PANAMA 4178; C. STATE 134923

1. ALL POINTS RAISED IN DEPT REFTEL C WERE DISCUSSED AT MEET-
ING REPORTED REF A, BUT NOT DEALT WITH EXPLICITLY IN THE CABLE
FOR REASONS OF BREVITY.

2. RE PARAS 1-2 REF C, EMBASSY INQUIRED AT MEETING WHETHER
PHRASE "LAWS OF THE CANAL ZONE" IN SECTION 5083 CZC EXCLUDED
U.S. MILITARY CHARGES UNDER UCMJ. MCKABNEY SAID SEVERAL U.S.
COURT DECISIONS HAD INTERPRETED THIS PHRASE AS USED IN CALA
ZONE CODE TO INCLUDE CODE ITSELF, ALL PORTIONS OF U.S. CODE
AND STATUTES AT LARGE APPLYING TO CANAL ZONE, AND UCMJ TO
EXTENT IT APPLIED TO U.S. MILITARY IN CANAL ZONE. THEREFORE,
MCKABNEY STATED THAT MILITARY PROCEEDINGS UNDER UCMJ IN
CUEVAS' CASE WOULD BE RULED TO BE PROCEEDINGS UNDER "LAWS
OF THE CANAL ZONE", AND THAT TRIAL BY CANAL ZONE CIVIL AUTHORITIES
RATHER THAN U.S. ARMY WOULD NOT RPT NOT BE NECESSARY
TO INVOKE THE BAR TO EXTRADITION RAISED BY SECTION 5083.
HE SAID HE WOULD SO ADVISE THE GOVERNOR FORMALLY IF THE
QUESTION AROSE. PLEASE ADVISE IF DEPT REQUIRES SPECIFIC
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 PANAMA 04229 111835Z

CITATIONS FROM MCKABNEY ON POINT.

3. RE PARA 3 REF C, BOTH SOUTHCOM LEGAL ADVISER AND
MCKABNEY NOTED AT MEETING THAT CANAL ZONE AUTHORITIES
COULD NOT RPT NOT TRY CUEVAS FOR ATTEMPTED MURDER, OR
FOR ANY OTHER CHARGE ARISING DIRECTLY FROM AN ACT, THE
SHOTTING OF THE GUARDSMAN, WHICH DIT NOT TAKE PLACE IN

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

THE CANAL ZONE. SINCE DID TRANSPORT THE TAXI DRIVER AT
GUNPOINT WITHIN THE CANAL ZONE, HOWEVER (REF A), BOTH
AGREED THAT CANAL ZONE AUTHORITIES COULD RPT COULD TRY
HIM ON THE KIDNAPPING CHARGE--ALTHOUGH SUCCESSFUL
PROSECUTION WOULD DEPEND, AS IN CASE OF MILITARY PRO-
SECUTION UNDER UCMJ, ON AVAILABILITY AND WILLINGNESS
OF WITNESS, THE TAXI DRIVER, TO TESTIFY.

4. MCKABNEY STATED THAT CANAL ZONE AUTHORITIES COULD
ALSO TRY CUEVAS FOR THE LARCENY, BUT THAT THE PURELY
MILITARY CHARGES UNDER UCMJ (EG. AWOL) COULD ALSO ONLY
BE TRIED BY MILITARY. MCKABNEY HAD DISCUSSED CASE WITH
U.S. ATTORNEY FOR CANAL ZONE VIOLANTI PRIOR TO MEETING,
AND SAID VIOLANTI AGREED AS TO THE TWO OFFENCES WHICH
COULD BE TRIED BY CANAL ZONE CIVIL AUTHORITIES, AND ALSO
AGREED THAT IN THESE INSTANCES OF CONCURRENT JURISDICTION
IT WAS PREFERABLE TO FOLLOW USUAL CANAL ZONE PRACTICE OF
DEFERRING TO MILITARY TO HANDLE THEM.

4. RE PARA 4 REF C, IT WAS ALSO NOTED AT MEETING THAT
ATTEMPTED MURDER WAS MOST SERIOUS OFFENCE, AND THAT NORMAL
SITUATION IN EXTRADITION CASES WAS AS DESCRIBED BY DEPT.
THIS PREFERS EXTRADITING CUEVAS TO PANAMA, ALTHOUGH THE
FORCE OF THE POINT IS SOMEWHAT LESSENED BY CLEAR MILITARY
RIGHT TO TRY HIM FOR SAME OFFENCE UNDER UCMJ. HOWEVER,
OTHER LEGAL AND, MORE IMPORTANT, POLICY FACOTRS LED
ULTIMATELY TO OUR RECOMMENDATION NOT TO EXTRADITE HIM.

5. RE PARA 6 REF C, IT WAS EXPLICITLY ACKNOWLEDGED BY
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 PANAMA 04229 111835Z

ALL PARTIES AT MEETING THAT SITUATION DESCRIBED BY DEPT
WOULD PREVAIL IN PANAMA UNDER A NEW TREATY AND SOFA. IT
WAS FURTHER NOTED THAT THE SAME SITUATION WOULD ALSO
PREVAIL AT THIS TIME IN VIRTUALLY ANY COUNTRY OTHER THAN
PANAMA WERE U.S. MILITARY FORCES ARE STATIONED UNDER A SOFA.

6. HOWEVER, GOVERNOR PARFITT NOTED STRONGLY THAT WE DO
NOT YET HAVE A NEW TREATY AND THAT THE ONLY VALID BASIS
FOR A DECISION WAS OUR ACTUAL CURRENT SITUATION, NOT
SITUATION WHICH WOULD PERTAIN IN A PHYVOHETICAL FUTURE.
FURTHER, HE NOTED STRONG SENSITIVITIES BOTH LOCALLY AND
IN U.S. CONGRESS ABOUT USG BEHAVING AS THOUGH A NEW
TREADY ALREADY EXISTED--WHILE LATTER IS NOT STRICTLY A
LEGAL POINT, IT IS A VALID POLICY CONSIDERATION.

7. CASE WAS ADMITTED AT MEETINT TO HAVE SEVERAL ARGUABLE
LEGAL ASPECTS. THERE IS SOME LEGAL PREFERENCE FOR TRYING
THE ALLEGED OFFENDER WHERE THE MOST SERIOUS OFFENCE OCCURRED.
HOWEVER THERE IS ALSO A CLEAR LEGAL AND MORAL PREFERENCE

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

TO PROTECT HIS RIGHT TO A FAIR TRIAL. AND WHILE WE STILL
CONSIDER THAT HE PROBABLY COULD RECEIVE A FAIR TRIAL
AT THE MOMENT IN PANAMA, ALL PARTICIPANTS AT MEETING
AGREED THAT THERE WAS A PERCEPTIBLY GREATER CHANCE THAT HE
WOULD NOT IF RETURNED TO PANAMA THAN IF RETAINED BY THE U.S.
SENSE OF MEETING WAS THAT NEITHER EXTRADITION NOR
RETENTION WAS CLEARLY LEGALLY MANDATORY UPON USG, NOR WAS
EITHER COURSE CLEARLY LEGALLY EXCLUDED. ALL PRESENT
AGREED THAT DECISION WHETHER OR NOT TO EXTRADITE
MUST BE ESSENTIALLY A POLICY DECISION, NOT A LEGAL ONE.
AS DISCUSSED VARIOUS TELECONS, OUR RECOMMENDATION THAT
HE NOT BE EXTRADITED WAS REACHED ON THE ASSUMPTION OF
THIS LEGAL SITUATION, AND AFTER CONSIDERING ALSO WHICH
COURSE WAS MORE LIKELY TO BE MORE DETRIMENTAL TO OUR
POLICY INTERESTS IN PANAMA.
GONZALEZ

CONFIDENTIAL

NNN

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Message Attributes

Automatic Decaptioning: Z
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MILITARY PERSONNEL, EXTRADITION
Control Number: n/a
Copy: SINGLE
Sent Date: 11-Jun-1977 12:00:00 am
Decaption Date: 22 May 2009
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977PANAMA04229
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D770209-0646
Format: TEL
From: PANAMA
Handling Restrictions:
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770666/aaaacfvk.tel
Line Count: 131
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 9c5de57e-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: STADIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: STADIS
Reference: 77 PANAMA 4173, 77 PANAMA 4178, 77 STATE 134923
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2185441
Secure: OPEN
Status: NATIVE
Subject: GOP REQUEST TO EXTRADITE U.S. SOLDIER
TAGS: PDIP, MILI, PN, PQ, (CUEVAS, ALBERTO)
To: STATE
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/9c5de57e-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009